

DOCKET FILE COPY ORIGINAL

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

RECEIVED
APR 6 2000
FCC MAIL ROOM

In the Matter of)
MCI WORLDCOM COMMUNICATION)
SERVICES, INC.)

Petition for Expedited Declaratory)
Ruling Regarding the Process for)
Adoption of Agreements Pursuant)
To § 252(i) of the Communications)
Act and § 51.809 of the)
Commission's Rules)

CC Docket No. OO-45

**COMMENTS SUBMITTED BY THE OKLAHOMA CORPORATION
COMMISSION TO THE PETITION OF MCI WORLDCOM
TELECOMMUNICATION SERVICES, INC. FOR DECLARATORY RULING**

Ernest G. Johnson, Director
Public Utility Division
Oklahoma Corporation Commission
P.O. Box 52000-2000
Oklahoma City, Oklahoma 73152-2000
Telephone: (405) 521-3908
Facsimile: (405) 522-1157

No. of Copies rec'd 0
List ABCDE

March 31, 2000

I. INTRODUCTION

In the above captioned matter, the Federal Communications Commission ("FCC") seeks comment regarding the petition that MCI Worldcom Communication Services, Inc. ("MCI") has filed.¹ MCI is requesting a declaratory ruling from the FCC concerning a requesting carrier's ability to adopt or opt into previously approved interconnection agreements under § 252(i) of the Federal Telecommunications Act of 1996 ("FTA"), codified at 47 U.S.C. §252(i). The Oklahoma Corporation Commission ("OCC") appreciates the opportunity to make comments and supports clarification of a previously unraised issue.

The Corporation Commission of the State of Oklahoma hereby respectfully submits comments in response to the petition for declaratory ruling filed herein by MCI.

II. STATE COMMISSION APPROVAL IS REQUIRED FOR AN ADOPTED INTERCONNECTION AGREEMENT TO BECOME EFFECTIVE.

The OCC does not agree that the procedure it follows, upon the filing of an application to adopt an interconnection agreement, is unclear. The FTA specifically gives the state commissions the responsibility for rejection or approval of interconnection agreements.² As required by the FTA §252(e), and adopted by the OCC in OAC 165:55-17-7, an application for such an adoption is required to be filed, through the office of the Court Clerk, for approval or rejection by the State commission. This has consistently been the policy of the OCC.

¹ In the Matter of the Revised Petition of MCI Worldcom Communication Services, Inc. for Declaratory Ruling Regarding the Process for Adoption of Agreements Pursuant to Section 252(i) of the Communications Act and Section 51.809 of the Commissions Rules. CC Docket No. 00-45.

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. § 252 et. seq. (1996 Act).

It is the OCC's determination that applications to adopt an approved interconnection agreement do require state commission approval and are not effective automatically on the date of notice of the adoption for several reasons. First, 47 U.S.C. § 252(i) simply requires that an ILEC make any interconnection, service, or network element provided under a previously approved agreement available to a requesting telecommunications carrier under the same terms and conditions. That section does not say these types of agreements are automatically effective without any state commission action, which it could have stated if that had been the intent of the Act. Second, the Federal Communication Commission's ("FCC") First Report and Order in CC Docket 98-96, § 1321, which interprets FTA § 252(i), states that a carrier seeking interconnection, network elements, or services pursuant to §252(i) shall be permitted to obtain its statutory rights *on an expedited basis*.³ (*Emphasis added.*) An 'expedited basis' does not contemplate immediate unilateral adoption. And third, FCC Rule 51.809(a) states that an ILEC shall make interconnection, network elements or services available *without unreasonable delay*, and (b) goes on to identify specific instances wherein the ILEC may object to the specific terms and conditions.⁴ (*Emphasis added.*) 'Without unreasonable delay' does not contemplate immediate unilateral adoption. In addition, FCC Rule 51.809(b) contemplates that the ILEC will have a reasonable opportunity to raise specific grounds for objection. The Oklahoma Corporation Commission believes that the proper forum for determining the validity of such an

³ See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, para.1321 (1996).

⁴ 47 C.F.R. § 51.809.

objection lies with the state commissions during the review and approval process contemplated by FTA § 252.

Further, pursuant to §252(h) of the FTA, state commissions are the official repositories of approved interconnection agreements and are charged with the responsibility to make each approved interconnection agreement available for public inspection.⁵ The OCC has determined, as stated above, that once a carrier proposes to opt into or adopt an interconnection agreement, that agreement must be approved or rejected as set out in § 252(e). Further, upon state commission approval of an adoption of an interconnection agreement, pursuant to the approval or rejection requirements of Section 252(e), the approved adopted interconnection agreement becomes the enforceable interconnection agreement between the requesting carrier and an ILEC, and must be available for public inspection as required by FTA § 252(h) and § 1321 of the First Report and Order on Local Competition.⁶

III. ADOPTED AGREEMENTS REQUIRE STATE COMMISSION ACTION AND ARE NOT EFFECTIVE AUTOMATICALLY.

Nowhere in the FTA, the First Report and Order in CC Docket No. 96-98, or the FCC rules does it specify that the adoption of an agreement is effective automatically. In fact the opposite is true. When read as a whole, these sections all contemplate state commission action. In the First Report and Order, § 1321, where it says 'on an expedited basis', it could easily have said 'effective immediately', if it intended to allow immediate

⁵ 47 U.S.C. § 252(h) (1996).

⁶ *Supra*, Local Competition First Report and Order, 11 FCC Rcd para. 1321.

unilateral adoption without state commission review.⁷ Likewise, in FCC Rule 51.809 where it says 'without unreasonable delay', the rule could have specified 'immediately', if that is what was intended and if state commission review was not intended. Assuming arguendo that it was intended that the adoption be effective immediately, then FCC Rule 51.809(b), which allows the ILEC notice and the opportunity to be heard on an objection to the adoption would be ineffective, because there would be no time or process for that objection.⁸ The OCC asserts such a finding is untenable. Further, the practical effect of such a determination could result in an ILEC being in violation of the agreement before the ILEC has a reasonable opportunity to provision the terms required by that agreement. This type of resulting burden is contrary to principles of due process and simple fair play. The OCC supports a finding that the FCC rules contemplate and allow a reasonable time for state commission review and reasonable time for an ILEC to make the necessary changes required to fulfill the terms and conditions of an interconnection agreement being opted into by an interconnecting service provider.

IV. RESPONSE TO MCI's POSITION REGARDING AN EXPEDITED PROCESS IN THE EVENT AN ILEC OBJECTS PURSUANT TO FCC RULE 51.809(b).

MCI has alleged that a request to adopt an interconnection agreement should be effective on the date of notice of adoption. MCI further states that the OCC has no process for obtaining expedited resolution in the instance where an ILEC objects to the adoption. The OCC does not agree with MCI's statements. The OCC recognizes and will

⁷ First Report and Order at § 1321.

⁸ 47 C.F.R. § 51.809.

ensure the residents of the State of Oklahoma receive the inherent benefits of robust competition, and in support of that endeavor are strongly committed to enabling qualified CLECs to begin operation within the State as soon as possible. In the event that an ILEC raises an objection, pursuant to FCC Rule 51.809(b), to a carrier's adoption of a prior Commission approved interconnection agreement, the carrier may use the dispute resolution process as provided in OCC rules at OAC 165:55-22-7. OAC 165:55-22-7 provides a formal procedure for dispute resolution with an expedited ruling when, *inter alia*, the dispute precludes the provisioning of any service, functionality or network element. OAC 165:55-22-7 does require the filing of a formal complaint, and establishes the timeline which requires that the OCC enter its order on the complaint no later than thirty (30) days after the filing of the complaint, unless otherwise agreed to by the parties.

V. RETROACTIVE APPROVAL

In response to MCI's request that the effective date of the agreement be retroactive to the date of notice of adoption when an ILEC has been unsuccessful in its objection under FCC Rule 51.809(b), the OCC has consistently maintained that interconnection agreements are effective on the date on which the Commissioners approve the agreement. However, upon agreement of the parties and with the approval of the Commissioners, the order may state that the agreement will be effective retroactively.

VI. RECOMMENDATION

For the reasons given above, the OCC urges the Federal Communications Commission to find the following:

(1) a state commission is charged with the duty and responsibility under the FTA to review and approve an adoption of a previously approved interconnection agreement under §252(i) of the FTA and §51.809 of the Commission's Rules; and,

(2) interconnection agreements are considered effective on the date on which the state commission approves the agreement. However, upon the agreement of the parties and with the approval of the state commission, the Order may state that the agreement is effective retroactively.

Respectfully Submitted,

Oklahoma Corporation Commission

BY: /s/ Ernest G. Johnson, Director

Ernest G. Johnson, Director
Public Utility Division
Oklahoma Corporation Commission
Post Office Box 52000-2000
Oklahoma City, Oklahoma 73152-2000
Telephone: (405) 521-3908
Facsimile: (405) 522-1157

CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing comments was mailed, postage prepaid, addressed as follows:

MCI Worldcom, Inc.
Kecia Boney Lewis
Lisa B. Smith
1801 Pennsylvania Avenue, N.W.
Washington, D. C. 20006

Magalie Roman Salas, Secretary
Federal Communications Commission
455 Twelfth Street, S.W.
Washington, D.C. 20554

Michelle Carey, Chief
Policy & Programming Planning Division
Federal Communications Commission
455 Twelfth Street, S.W.
Washington, D.C. 20554

Julie Patterson
Common Carrier Bureau
Federal Communications Commission
455 Twelfth Street, S.W., Room 5-C143
Washington, D.C. 20554

Robert Atkinson
Common Carrier Bureau
Federal Communications Commission
455 Twelfth Street, S.W., Room 5-C356
Washington, D.C. 20554

Radhika Karmarkar
Common Carrier Bureau
Federal Communications Commission
455 Twelfth Street, S.W., Room 5-C831
Washington, D.C. 20554

ITS, Inc.
445 Twelfth Street, S.W.
Washington, D.C. 20554

Dated at Oklahoma City, Oklahoma this 31st day of March, 2000.

/s/ Elizabeth Ryan

Elizabeth Ryan